

DATE: December 21, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 07-08069
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
DAVID M. WHITE**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 48-year-old employee of a defense contractor. He still owes a significant number and amount of delinquent debts that he accrued since closing his business and accepting his current job in late 2003. He has a \$600 monthly deficit of income to recurring expenses, and no plan to bring the situation under control. He did not deliberately falsify his security clearance application, but security concerns raised by financial considerations were not mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

\_\_\_\_\_Applicant applied for a security clearance on November 15, 2006, in conjunction with his employment by a defense contractor as a safety coordinator. On September 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons, under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG),<sup>1</sup> why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a notarized letter, dated October 15, 2007, admitting the truth of some of the allegations and denying others, and elected to have a hearing before an administrative judge. The case was then assigned to me on November 1, 2007. A Notice of Hearing was issued on November 7, 2007, and the hearing was held as scheduled on December 3, 2007. During the hearing, the Government offered nine exhibits that were marked as Government Exhibits (GE) 1 through 9, and admitted without objection. Applicant testified, and offered one exhibit that was admitted without objection and marked Applicant Exhibit (AE) A. The record was kept open until December 10 to permit submission of additional evidence. Applicant submitted one additional exhibit, to which Department Counsel had no objection, that was admitted as AE B. DOHA received the hearing transcript (Tr.) on December 12, 2007.

### **FINDINGS OF FACT**

Applicant formally admitted the truth of the factual allegations set forth in SOR ¶¶ 1.b through 1.f, 1.h, and 1.j through 1.s, pertaining to financial considerations under AG F. Those admissions are incorporated herein as findings of fact. He denied the remaining allegations under AG F, and the allegation under AG E in ¶ 2, in his response to the SOR. After a complete and thorough review of all the evidence in the record, I make the following findings of fact:

Applicant is a 48-year-old employee of a defense contractor seeking to obtain a security clearance. He previously held a clearance while serving in the Navy from 1979 to 1994. He is married, with three children, ages four, two and three months. His wife does not work outside the home. He took a voluntary early retirement from the Navy, and, after deductions including a \$188 allotment toward one of his debts, he receives \$535 per month in combined retirement pay and VA compensation each month. He has worked in his present job since December 2003, and earns approximately \$1,000 every two weeks. He owns his home, with monthly mortgage payments of \$1,000.

From 2000 until November 2003, Applicant and his wife operated a business delivering appliances for a major retail store. During that period, Applicant earned \$3,500 to \$4,000 every two

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<sup>1</sup>*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (August 2006)* as implemented by Under Secretary of Defense Memorandum of Aug. 30, 2006 for use in adjudication of all cases in which an SOR had not been issued by Sept 1, 2006. Copies of the applicable AG were provided to Applicant with the SOR.

weeks. Their current financial troubles began when they closed the business and he started working at his current job with substantially reduced income. He closed the business because of increased fuel costs and having to fire his assistant over drug use. Since that time, Applicant has incurred increasing amounts of delinquent debt. His monthly expenses exceed income by more than \$600, without any allowance for repayment of delinquent debts. He is two months behind on his mortgage payments, and plans to apply for an assistance grant from the local housing authority to help with the arrearage. He has consulted an attorney about filing for bankruptcy, but cannot afford to do that until he receives his federal income tax refund next year. (Tr. at 27-37).

Applicant and his wife previously filed a Chapter 13 bankruptcy petition in 1991, involving about \$19,000 in debts. This bankruptcy proceeding was discharged in 1995. These circumstances arose while he was still on active duty in the Navy, were fully resolved at the time, and bear little relevance to Applicant's current financial situation. Applicant did have a civil judgment entered against him, as alleged in SOR ¶ 1.q, but that was paid back in 2004 and no longer appears on his credit reports.

Applicant denied owing the debts alleged in SOR ¶¶ 1.a, and 1.i, because he contacted both creditors and neither had a record of his account. He submitted a formal dispute to the credit bureaus with respect to each. He also claimed that he repaid the debt alleged in SOR ¶ 1.g, which his credit report shows as a charge-off with a zero balance due. He is making monthly payments of \$188 by allotment from his retirement check toward the debt alleged in SOR ¶ 1.h, which is not delinquent.(AE B.) He admitted the remaining delinquent debt alleged in the SOR and reflected on his credit bureau reports (GEs 5, 6, 7 and 8). These debts total \$19,714. He is current on his property taxes, after making a late payment in April 2007 from his federal income tax refund. (GE 2 at 5, 8; Tr. at 43, 56-59.)

When Applicant filled out his security clearance application, he left the yes and no blocks blank in response to question 28a, concerning 180-day delinquent debt. Instead, he wrote "UNCERTAIN" next to the blocks. (See AE A at 9.) He turned the application in to his company's security manager, who input the data into an electronic questionnaire. Applicant was asked to sign the signature page of the electronic version without checking the contents. The security manager entered a "No" answer on the electronic form without Applicant's knowledge. (See GE 1 at 31.)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines (AG) which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the AG are divided into disqualifying conditions (DC) that may raise security concerns, and mitigating conditions (MC) that may reduce or negate security concerns. Applicable DCs and MCs must be considered in deciding whether to grant, continue, deny or revoke an individual's eligibility for access to classified information. Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, under Guideline F and E, are set forth and discussed in the conclusions section below.

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to be applied in conjunction with the factors set forth in the Adjudicative Process provision

of the Directive,<sup>2</sup> to assist the administrative judge in reaching fair and impartial, common sense decisions.

The entire decision-making process is a conscientious scrutiny of a number of variables known as the “whole person concept.” All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider, in addition to the applicable guidelines, are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Protection of the national security is the paramount consideration, so the final decision in each case must be arrived at by applying the standard that issuance of a clearance must be clearly consistent with the interests of national security. Any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security.<sup>3</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”<sup>4</sup> The burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. “Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.”<sup>5</sup> “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance

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<sup>2</sup>AG ¶ 2.

<sup>3</sup>AG ¶¶ 2(b), 2(c).

<sup>4</sup>“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>5</sup>Directive ¶ E3.1.14.

decision.”<sup>6</sup> Once it has met its initial burden of production, the burden of persuasion (including any burden to disprove a mitigating condition) never shifts to the government.<sup>7</sup>

A person applying for access to classified information seeks to enter a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 specifically provides that any adverse industrial security clearance decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned,” so the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## **CONCLUSIONS**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall common sense decision based on all available evidence, both favorable and unfavorable. The decision must be arrived at by applying the standard that the grant or continuance of a security clearance or access to classified information is clearly consistent with the interests of national security.

### **Guideline F: Financial Considerations**

Financial considerations raise security concerns when a person has significant delinquent debts. “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>8</sup>

I have considered all of the Financial Considerations Disqualifying Conditions (FC DC), and find that FC DC 19(a) (“inability or unwillingness to satisfy debts”) and FC DC 19(c) (“a history of not meeting financial obligations”) apply to Applicant’s situation and raise security concerns. He admittedly owes almost \$20,000 in SOR-alleged delinquent debts, which he has neither the means

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<sup>6</sup>Directive ¶ E3.1.15.

<sup>7</sup>ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

<sup>8</sup>AG ¶ 18.

nor intention to repay. His monthly income is \$600 less than his recurring expenses, making his financial situation continually worse. No other FC DC applies.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC) that might apply to Applicant's inability to meet, and history of not meeting, his financial obligations. FC MC 20(a) ("the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment") does not apply since his delinquent indebtedness continues to date.

FC MC 20(b) ("the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances") applies to some degree. Applicant chose to close a business that was generating three to four times more income than his current job. His stated reason was that fuel costs rose, which would only make sense if those fuel costs substantially reduced his ability to continue generating that income. He did obtain his present employment shortly thereafter, but has continued incurring additional delinquent debt with no plan to turn the situation around. Accordingly, the pressures resulting from the delinquent indebtedness and a bad credit rating remain.

FC MC 20(c) ("the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control") was not established by Applicant. He said that a VA counselor worked out a budget for him several years ago showing the \$600 monthly deficit. He did not obtain or follow financial counseling to resolve the situation, however.

FC MC 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") also does not apply to mitigate security concerns arising from his financial situation. He showed that he is making regular payments toward one SOR-alleged debt, and is disputing two others. His only potential plan to address the rest is a possible bankruptcy filing sometime next year.

Applicant disputes the legitimacy of some of his reported past-due debts, but presented no documentation to substantiate the basis of the disputes, or actions to resolve them. Accordingly, FC MC 20(e) ("the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue") does not mitigate security concerns, even with respect to the portion of the indebtedness he disputes. No unexplained affluence concerns were raised, so FC MC 20(f) has no bearing in this case.

## **Personal Conduct**

"Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any

failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.”<sup>9</sup>

The Regulation’s personal conduct guideline requires deliberate omission, concealment or falsification of relevant facts to establish Personal Conduct Disqualifying Condition (PC DC) 16(a) (“deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities”). Appellant provided an accurate answer of “UNCERTAIN” when he completed his security clearance application, but his security manager change it to “No” on the electronic application form that was submitted to the government. Applicant was not aware of this incorrect answer, so no security concerns arise from this allegation.

### **Whole Person Analysis**

I have considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. The nature, extent, and seriousness of his delinquent indebtedness is not under control, and is getting worse as time passes. Applicant is a mature, educated adult who chose to close a business and accept his current employment, and offered no reason he should not be considered accountable for his voluntary actions. He produced no evidence of rehabilitation or other permanent behavioral changes. The evidence shows that continuation and worsening of these problems is highly probable into the foreseeable future. Accordingly, I find that Applicant has not mitigated the security concerns raised by the financial considerations set forth in the SOR. It is not clearly in the interest of national security to grant him access to classified material.

### **FORMAL FINDINGS**

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1, GUIDELINE F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant

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<sup>9</sup>AG ¶ 15.

Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant

Paragraph 2, GUIDELINE E:  
Subparagraph 2.a:

FOR APPLICANT  
For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

David M. White  
Administrative Judge